



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

October 8, 1998

Ms. Carla Robinson  
Assistant City Attorney  
City of College Station  
1101 Texas Avenue  
College Station, Texas 77842

OR98-2394

Dear Ms. Robinson:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 118874.

The City of College Station (the "city") received a request for various information:

1. All correspondence the City of College Station has had with Paul J. Clarke/Clarke & Wyndham Inc. during the following time period: June 1, 1994 to (and including) July 20 1998.
2. Copies of the City's lease agreement with Donald and Cheryl Anz for the Café Eccell property, that was executed after April 1, 1997, as well as any subsequent renewals, extensions or modifications of that lease space, up to and including the current lease effective as of July 20, 1998.
3. Copies of all Appraisal reports contracted and paid by the city in regards to any and all Northgate area properties during the time period: January 1, 1992 to January 1, 1997.
4. Copies of the political contribution reports for the following political candidates concerning the periods indicated: Hub Kennady - May 1994 and May 1996 elections; Larry Marriott - May 1994, May 1996 and May 1998 elections; Lynn McIlhaney - May 1994, May 1996 and May 1998 elections; David Hickson - May 1995 and May 1997 elections; Dick Birdwell - May 1996 election.

You state that you will release the political contribution reports. However, you claim that the information requested in items 2 and 3 of the request is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of documents.<sup>1</sup>

Section 552.103(a) of the Government Code excepts from disclosure information:

- (1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and
- (2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

The city has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). The city must meet both prongs of this test for information to be excepted under 552.103(a).

In this instance, you state that the city is involved in litigation arising from its efforts to revitalize the Northgate area. You have also submitted copies of the relevant pleadings. We conclude that litigation is pending and that the documents submitted by the city are related to the litigation for the purposes of section 552.103(a). Therefore, the submitted documents may be withheld from disclosure.

Generally, however, once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to the opposing party in the litigation is not excepted from disclosure under section 552.103(a), and it must be disclosed. Further, the

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<sup>1</sup>We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach and, therefore, does not authorize the withholding of any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read "June B. Harden". The signature is fluid and cursive, with the first name "June" being more prominent.

June B. Harden  
Assistant Attorney General  
Open Records Division

JBH/ch

Ref.: ID# 118874

Enclosures: Submitted documents

cc: Mr. George Sopasakis  
Burger Boy Operations  
311 Church Street  
College Station, Texas 77840  
(w/o enclosures)